

Not happy with changes in your building?

A builder has to take an NoC from residents in an apartment block if he intends modifying sanctioned building plans

Sunil Tyagi

htestates@hindustantimes.com

The judgment pronounced by the Allahabad High Court in the Designarch Infrastructure Private Limited case versus the vice chairman of the Ghaziabad Development Authority (GDA) and others dated November 14, 2013 (Designarch case) has garnered much attention.

In one of the petitions clubbed in the matter, the developer had been allotted purchasable floor area ratio (FAR) by the sanctioning authority to undertake additional construction in the apartment complex. The developer applied for an amendment of the original sanctioned building plans for constructing additional floors, additional buildings and parking area which altered the entitlements of existing purchasers/allottees to the open and common areas of the complex. The revised building plans had been approved by Ghaziabad Development Authority. However, it subsequently came to light that the developer had not obtained prior written consent of purchasers/allottees, before submission of such

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revised building plans. Hence, the allottees prayed for quashing of the revised building plans as well as quashing of allotment of purchasable FAR to the developer.

Although the appeal against the order is now pending before the Supreme Court, it is important to highlight provisions of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 (UP Act) and corresponding Uttar Pradesh Apartment Rules, 2011 (Rules) regarding duties of the promoters towards homebuyers on the issue of description or change in any description of building plans of projects in Uttar Pradesh. First, a promoter is required to furnish details of all project approvals and permissions to buyers at the initial stage of booking. Section 4 of the UP Act, pertaining to the duties of promoters, clearly stipulates that any promoter who intends to sell an apartment has to make a full and

true disclosure about various facts regarding the project, in writing, to an intending purchaser such as rights and title of promoter in the project land, plans and project approvals that have been granted or submitted for approval, etc.

A promoter is also required to submit a legal document called 'Declaration' to the competent authority within a period of 12 months from the date of approval of sanctioned building plans. This essentially contains important details of the project, such as total number of floors and apartments to be constructed, description of common areas and facilities and limited common areas and facilities, percentage of undivided interest in common areas and facilities related to each apartment, to name a few.

The UP Act clearly states that it is incumbent upon a promoter to enclose a true copy of the declaration with the deed of transfer executed in favour of the buyer.

In the Designarch case the court further went on to hold that failure to submit the declaration or failure to enclose its true copy with the deed of

transfer would disentitle the promoter from claiming rights in common areas and facilities, limited common areas or independent areas in the project.

Where any changes to the declaration filed is necessitated by reason of any revision in the sanctioned building plans, a promoter is required to follow the specific procedure that has been outlined under the UP Act. Intending buyers/owners who find themselves in the situation where the project plans have been significantly altered or modified, should bear in mind that as per the UP Act, prior to undertaking modifications of sanctioned building plans, a promoter is required to first obtain the approval of association of apartment owners of the project, as any such change would alter an apartment owner's rights and entitlements in common areas and facilities of the project.

This is because under this Act, proportionate undivided interest in common areas and facilities of the project is deemed to be conveyed to an apartment owner along with conveyance of the apartment. The relevant development authority may demand an NOC from apartment



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owners/allottees to be furnished before allowing any alteration in sanctioned building plans before granting approval.

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If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in

The author is senior partner at Zeus Law, a corporate commercial